SPA No. 20 of 2006
Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.
(Review Appln. No. 71/06)

Heard learned counsel for the applicant.

We have perused the application supported by an affidavit. This review application has been filed by the applicant for reviewing the judgment and order dated 03.05.2006 passed by this Court.

We do not find any good ground to review the said order and also do not find any merit in the application. The application is dismissed accordingly.

(B.C. K., J.) **(P.C. V., J.)**

06.12.2006
Rajeev Dang

In the High court of Uttaranchal, at Nainital.

Special Appeal No. 20/2005

Chandra Prakash Chaudhary
S/o Late D.P. Chaudhary
Senior Assistant, Office of Addl. Director,
Animal Husbandry, Gopeshwar
Chamoli. … Appellant.

Versus

1- State of Uttaranchal through Secretary,
Animal Husbandry, Civil Secretariat,
Uttaranchal.

2- Additional Director, Animal Husbandry,
Gopeshwar, Chamoli.

3- Deputy Director, Animal Husbandry,
Pashulok Rishikesh, Dehradun.

4- Mohan Lal Uniyal, Personal Assistant,
Addl. Director, Animal Husbandry, Gopeshwar
District Chamoli. …….Respondents.

Sri B.P.S. Mer, holding brief for Sri M.C. Pant,
Advocate for the appellant.
Sri K.P. Upadhyaya, learned S.C. for the State.
Sri D.S. Patni, Advocate for respondent No. 4.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 3-5-2006

By way of this Special Appeal, the impugned judgment and order dated 26-7-2004, passed by the learned Single Judge of this Court, has been put to challenge.

2- Brief facts of the case are that the services of the appellant/petitioner are governed by the U.P. Animal Husbandry Department Ministerial Service Rules, 1981, whereby separate cadres for the ministerial posts of the Head Office, i.e., the Directorate, Divisional Offices and subordinate offices were created. In the year 1981-82, separate directorate was created for eight Districts of the Hills and as such, there were two Directorates in the Department in U.P. The appellant was appointed on 24-10-1986 in the Directorate of Hills as Junior Clerk-cum-Typist and thereafter transferred in the office of the

respondent No.2 on the same post w.e.f. 19-1-1987. His work and conduct had always been found satisfactory and in the year 1992, the appellant was entitled for promotion to the post of Senior Clerk in the office of respondent No.2, but a person, junior to him, was promoted as Senior Clerk in the said office. Consequently, the appellant knocked the doors of Allahabad High Court by filing a writ petition, wherein a direction was issued to the respondents to consider the promotion of the appellant w.e.f. 4-12-1992, i.e. the date from which the person junior to the appellant was promoted. Resultantly, respondent No.2 vide his order dated 23.12.1995 promoted the appellant on the post of Senior Clerk w.e.f. 4.12.1992. Later on, vide order dated 19-7-1997, for the purpose of fixation of pay, the appellant was treated to have been promoted to the post of Senior Clerk w.e.f. 1.12.1990. Again, the appellant was appointed on the vacant post of Senior Assistant in the pay scale of Rs. 1350-2200 w.e.f. 1.1.1993 vide order dated 16.12.1996. Meanwhile, one Mohan Lal Uniyal (allegedly junior to the appellant) was promoted on the post of Administrative Officer and Personal Assistant w.e.f. 1.12.1995. By means of another order dated 1.2.1997, Sri Uniyal was promoted to the post of Personal Assistant w.e.f. 1.1.1997. As such, the appellant has alleged that the persons belonging to the subordinate office cadre were promoted in the Head Quarters, which is discriminatory in nature and in violation of principles of natural justice.

3- The appellant challenged the promotion of Mohan Lal Uniyal and claimed his own promotion by way of the writ petition filed before this Court.

4- The respondents in the writ petition filed their counter affidavit and contested the claim of the appellant. The preliminary objections raised by the respondents are that the appellant had also moved a writ petition before the Allahabad High court earlier which was dismissed. The another objection was raised that the alternative remedy available to the appellant is before the Public Service Tribunal. It has also been pleaded in the counter affidavit that the appellant has already been given all his promotions and arrears of salary due to him in compliance of the order dated 29-

9-1995 passed by Public Service Tribunal in the claim petition filed by the appellant bearing No. 936/1995. The respondents have also pleaded that the appellant again filed a writ petition before the Allahabad High Court regarding his seniority and this writ petition was also dismissed with the observation that the respondents may consider objection, if any, to the seniority list prepared by the department. It is also pleaded that the work and conduct of the appellant has always been below satisfactory.

5- Learned Single Judge after having perused the entire evidence on record and hearing learned counsel for the parties, dismissed the writ petition filed by the petitioner/appellant vide judgment and order dated 26-7-2004.

6- Feeling aggrieved by the aforesaid judgment and order this Special Appeal has been preferred by the petitioner/appellant.

7- Heard learned counsel for the parties and perused the record.

8- The case of the appellant is based on the seniority list relied by him which has been annexed as Annexure-9 to the writ petition. The respondents have alleged that the aforesaid seniority list is forged and false as the same does not bear any date or the endorsement of the office through which it was issued. The appellant has filed supplementary affidavit before the learned Single Judge and Annexure-2 to the supplementary affidavit is a letter dated 8-8-2002. The perusal of this letter shows that the contents made therein are itself creating doubt about the veracity of the letter. The counter affidavit filed by the respondents shows that till that date seniority list has not been finalized by the department as is evident from the letter dated 27-6-1998 sent by Additional Director to the Director of Animal Husbandry. Learned Single Judge has recorded sufficient reasons for having doubt about the veracity of the contents of the letter annexed by the petitioner along with his petition. The learned Single Judge has also pointed out in the judgment that Annexure-9 filed along with the rejoinder affidavit itself is creating doubt regarding the genuineness of the document. We find that the reasonings

recorded by the learned Single are based on the sound assessment of the documents filed by the parties.

9- We do not find any ground to interfere in the impugned judgment passed by the learned Single Judge.

10- The Special Appeal lacks merit and is liable to be dismissed.

11. Accordingly the Special Appeal is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB